

IN THE SUPREME COURT OF MISSOURI

No. SC94212

CITY OF ST. LOUIS
Defendant/Appellant
Cross-Respondent

v.

SARAH TUPPER and SANDRA THURMOND
Plaintiffs/Respondents
Cross-Appellants

On Appeal from the Circuit Court of the City of St. Louis
Honorable Steven R. Ohmer

BRIEF OF *AMICUS CURIAE*
THE MISSOURI MUNICIPAL LEAGUE

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CONSENT OF ALL PARTIES

Pursuant to Rule 84.05(f) the Missouri Municipal League hereby notifies this Court that it has obtained the consent of all parties to file this brief.

JURISDICTIONAL STATEMENT

Amicus Curiae, the Missouri Municipal League, adopts and incorporates the Statement of Jurisdiction contained in the Appellant's Brief.

STATEMENT OF INTERESTS OF *AMICUS CURIAE*

The Missouri Municipal League ("MML") is a non-profit association of approximately 672 Missouri municipalities. The MML formulates policies to enhance the interests and welfare of Missouri municipalities and their citizens. *Tupper* is one in a series of recent cases that address the validity of red light camera ordinances. The specific issues raised in *Tupper*, and in other recent automated traffic enforcement cases, present a number of municipal law questions that are of critical importance to the MML. The circuit court's decision declaring St. Louis' red light camera ordinance void conflicts with the long-standing independent authority of municipalities to enact ordinances related to public safety and welfare as a supplement to state law. *Tupper*, along with the other red light camera decisions on which the circuit court relied, place municipalities in a state of uncertainty as to how they can properly enact and enforce an ordinance which merely supplements state law.

Tupper also raises issues regarding a municipality's use of rebuttable presumptions in the prosecution of municipal ordinance violations. Relying on the

Eastern District's decision in *Brunner v. City of Arnold*, and the Western District's decision in *Damon v. City of Kansas City*, the circuit court's judgment questions the City of St. Louis' ("City") use of the rebuttable presumption. Other recent decisions have approved the use of the presumption. See e.g., *Unverferth v. City of Florissant*, 419 S.W.3d 76 (Mo. Ct. App. E.D. 2013). *Tupper* therefore highlights a widening conflict in Missouri law, and establishes a need for clarity on the nature of municipal ordinances and the use of the rebuttable presumption in prosecuting violations of those ordinances.

STATEMENT OF FACTS

The MML adopts Appellant's Statement of Facts.

I. THE CIRCUIT COURT ERRED IN ENJOINING THE CITY FROM ENFORCING ITS RED LIGHT CAMERA ORDINANCE BECAUSE THE ORDINANCE IS A VALID EXERCISE OF THE CITY'S POLICE POWERS.

The City's red light camera ordinance ("Ordinance") was fully examined by the Eastern District in *Smith v. City of St. Louis*, where the Court held that the Ordinance was invalid as applied because of a defect in the notice being sent to violators. 409 S.W.3d 404, 418 (Mo. Ct. App. E.D. 2012). Despite the Court's limited holding, the circuit court mistakenly interpreted *Smith* to hold that the City's entire ordinance was void. (See L.F. 467-468). Furthermore, contrary to the joint stipulated facts in this case, the circuit court also mistakenly found that the City had not corrected its Notice to conform with Rule 37.33. (compare L.F. 231 to L.F. 468). As conceded by Respondents, the City's Notice

now conforms with Rule 37.33. (Transcript, at p. 7). Therefore, the circuit court erred in finding the Ordinance to be void.

The circuit court also erred in enjoining the enforcement of the ordinance because the Eastern District has already held that the Ordinance is a valid exercise of the City's police powers. *See Smith*, 409 S.W.3d at 426 (reversing the trial court's grant of summary judgment because "the Ordinance is a valid exercise of City's police power under Section 304.120, and because City possesses authority as a constitutional charter city to enact the Ordinance."). By enjoining enforcement of the Ordinance, the circuit court is infringing upon municipal authority to enact supplemental rules and regulations to meet their traffic needs. *See id.* at 424.

Missouri law is clear that ordinances regulating a municipality's traffic needs are presumed valid, and will be upheld if they have a rational relationship to the health safety, peace, comfort, and general welfare of the inhabitants of the municipality and do not conflict with state law. *Bezayiff v. City of St. Louis*, 963 S.W.2d 225, 229 (Mo. Ct. App. E.D. 1997). In holding that the City's Ordinance was invalid, the circuit court noted that the other red light camera cases have "strongly trended towards the invalidation of red light camera ordinances in general." (L.F. 468-469). The circuit court's approach not only disregards the presumption that the Ordinance is valid, but it also impermissibly substitutes its own judgment for that of a municipal legislative body. *City of St. Louis v. Liberman*, 547 S.W.2d 452, 457 (Mo. banc 1977) (courts "do not second-guess the judgment of the [municipal] legislative body as to the wisdom, adequacy, propriety, expediency or policy of the legislative act in question").

Pursuant to its police powers, the City's legislative body enacted the Ordinance to meet its traffic needs and exercised its discretion to impose a civil fine on owners of vehicles who violate the ordinance. This is permissible under Missouri law. Supreme Courts in other states have examined similar ordinances, in the context of both red light and speed cameras, and have upheld these ordinances as a valid exercise of a City's police or home rule powers. The conflict and exemption analyses applied in these cases are instructive in examining the City's, as well as other municipalities' red light camera ordinances.

In *City of Davenport v. Seymour*, the Iowa Supreme Court examined whether state law exempts municipalities from enacting automated traffic ordinances which impose a civil fine on vehicle owners for failure to obey red light traffic signals and speeding regulations. 755 N.W.2d 533, 535 (Iowa 2008). The Court held that Iowa Code Chapter 321,¹ and other code provisions, do not preempt a municipality from establishing supplemental traffic enforcement ordinances because the "fact that state law does not authorize the state to enforce its statute through certain remedial options does not mean that it forbids municipalities from the same course of action. . . . [T]he silence of the legislature is not prohibitory but permissive." *Id.* at 543.

¹ Iowa Code § 321.235 is similar to MO. REV. STAT. § 304.120 and states in part "no local authority shall enact or enforce any rule or regulation in conflict with the provisions of this chapter unless expressly authorized herein. Local authorities may, however, adopt additional traffic regulations which are not in conflict with the provisions of this chapter."

In *Mendenhall et al. v. City of Akron*, the Ohio Supreme Court examined whether Akron's automated traffic enforcement ordinance, which imposes a civil fine on the registered owner of any vehicle identified by an automatic camera to be speeding in a school zone, conflicted with state law imposing a criminal infraction on drivers who violate the speed limit. 881 N.E.2d 255, 262-263 (Ohio 2008). The Court concluded that, because the ordinance imposed a civil fine, and not a criminal penalty, it did not conflict with state law. *Id.* at 263. The Court reasoned that the ordinance does not change or replace state traffic laws, it merely supplements them, because a person who speeds in the presence of a police officer remains subject to the usual state traffic laws. *Id.* at 264. It is only "when no police officer is present and the automated camera captures [a] speed infraction does the ordinance apply, not to invoke the criminal traffic law, but to impose an administrative penalty on the vehicle owner." *Id.*

Likewise, nothing in Missouri law prohibits a municipality from enacting ordinances that impose civil fines for ordinance violations so long as the ordinances do not alter state traffic laws. *See* MO. REV. STAT. § 304.120 (West 2014). The City's decision here, to impose a fine on the owner of the vehicle does not alter or conflict with state traffic laws. It merely acts as a supplement to state law. For these reasons, the ordinance is a valid exercise of the City's police powers and should have been upheld as valid.

II. THE CIRCUIT COURT’S DECISION THAT THE ORDINANCE IS INVALID CANNOT BE UPHELD ON THE BASIS THAT THE ORDINANCE CONFLICTS WITH STATE LAW BECAUSE THE ORDINANCE IS SILENT ON WHETHER POINTS SHOULD BE ASSESSED TO THE DRIVER’S LICENSE OF THE RED LIGHT CAMERA VIOLATOR.

Respondents allege that the Ordinance is invalid because points are not assessed against the driver’s license of those found guilty of red light camera violations. (L.F. 25-26). Section 302.225.1 delineates requirements for reporting moving violation offenses to the Department of Revenue. *See* MO. REV. STAT. § 302.225 (West 2014). In addition, Section 302.302.1(1) requires two points to be assessed to any *driver* who commits a moving violation. *See* MO. REV. STAT. § 302.302 (West 2014). Although the Court of Appeals has previously determined in the other red light camera cases that the municipality’s ordinance conflicted with state law regarding the reporting and assessment of points, each of those cases involved either an ordinance or notice which contained language that expressly stated that the violation was “non-moving” or that “no points would be assessed.” *See Brunner v. City of Arnold*, 427 S.W.3d 201, 229 (Mo. Ct. App. E.D. 2013) (Arnold’s Code expressly states “except that no points will be assigned to the violators [sic] drivers license when guilty of an automated red light enforcement violations.”); *Damon v. City of Kansas City*, 419 S.W.3d 162, 186 (Mo. Ct. App. W.D. 2013) (ordinance states “that no points will be assessed against the defendant’s license.”); *Edwards v. City of Ellisville*, 426 S.W.3d 644, 664 (Mo. Ct. App. E.D. 2013) (both the

Ordinance and Notice of Violation state that an infraction of the Ordinance constitutes a non-moving violation); *Unverferth*, 419 S.W.3d at 96-97 (“Unverferth pleaded in the petition that the Ordinance conflicts with the aforementioned statutes because ... Florissant has classified violations of the Ordinance as non-moving infractions for which no points may be assessed.”). The City’s Ordinance is substantively different.

Contrary to those cases, nothing in the City’s Ordinance or Notice characterizes the violation as non-moving, or speaks to whether points will be assessed by the Department of Revenue. (L.F. 223-224). Therefore, the Ordinance itself does not conflict with state law. Instead, what Plaintiffs have taken issue with is the fact that the Department of Revenue (“DOR”) does not assess points for these violations. However, municipalities cannot control the decisions of DOR. Moreover, the City has fulfilled its reporting requirements under Missouri law, and therefore, DOR’s decision on whether or not to report these violations, has no bearing on the validity of the Ordinance.

Specifically, pursuant to Missouri law, courts are required to report convictions of offenses that involve motor vehicle’s violations of municipal ordinances to DOR, in the manner approved by DOR and the Department of Public Safety. *See* MO. REV. STAT. § 302.225.1 (West 2014). The Missouri Charge Code Manual, which is published by the Missouri State Highway Patrol in conjunction with the Office of State Courts Administrator (“OSCA”), identifies codes that correspond with both reportable and non-reportable offenses. (L.F. 294-305). Court clerks use the charge codes to report convictions for the corresponding violation, regardless of whether it is ultimately reported to DOR. *See* MO. CODE REGS. ANN. tit. 11 §§ 30-4.010(2) & 30-4.050 (West 2014).

In 2008, OSCA recommended to DOR that red light camera violations not be reported. DOR agreed with OSCA's recommendation, and as a result, OSCA provided municipalities with a new charge code to report violations of red light cameras. *See* Mo. Ass'n for Court Admin., 75 MACA Reporter 1, 9 (Summer 2008). (L.F. 366). This is the only charge code assigned by OSCA for red light camera tickets. OSCA notified municipalities that DOR would not assess points against the owner's license if the red-light camera reporting code was used. *Id.*; *See also* OSCA Charge Code Manual at p. 10, *available at* www.courts.mo.gov/file.jsp?id=2002 ("Public safety violation – red light camera (no points)"). (L.F. 305).

Consistent with the guidance it received from DOR and OSCA, the City clerk reports red light camera violations to Regional Justice Information Services ("REJIS") using the only charge code that references red light cameras. (L.F. 222-223). By using REJIS to forward the records of convictions of red light camera ordinance to the Department of Revenue, St. Louis fulfills its reporting duty with regard to such violation. *See* MO. REV. STAT. § 302.225.1.

For these reasons, the circuit court erred in holding that the Ordinance was invalid.

III. THE CIRCUIT COURT’S JUDGMENT DECLARING THE ORDINANCE VOID SHOULD BE REVERSED BECAUSE THE CIRCUIT COURT ERRED AS A MATTER OF LAW IN FINDING THE ORDINANCE’S REBUTTABLE PRESUMPTION UNLAWFUL.

In holding that St. Louis’ Ordinance was invalid, the circuit court relied in part on the fact that recent red light camera cases have caused a shift in its prior position on the validity of the “rebuttable presumption.” (L.F. 469). In support of this argument, the circuit court cited to the Eastern District’s decision in *Brunner* and the Western District’s decision in *Damon*, both of which addressed the rebuttable presumption in the context of red light cameras. *See Brunner v. City of Arnold*, 427 S.W.3d 201, 232-33 (Mo. Ct. App. E.D. 2013) (finding that the Ordinance’s rebuttable presumption violates the rights afforded by Article I, Section 10 of the Missouri Constitution); *Damon v. City of Kansas City*, 419 S.W.3d 162, 190 (Mo. Ct. App. W.D. 2013) (“if the ordinance is determined to be criminal in nature, then the rebuttable presumption is invalid”).

These decisions are directly contrary to well-established Missouri law that municipal ordinance violations are civil matters. *See Smith*, 409 S.W.3d at 417 (prosecutions by municipalities for the violation of a municipal ordinance “are civil proceedings with quasi-criminal aspects”); *City of Creve Coeur v. Nottebrok*, 356 S.W.3d 252, 257–58 (Mo. Ct. App. E.D. 2011) (finding Creve Coeur’s red light camera ordinance to be civil), *overruled on other grounds by Edwards v. City of Ellisville*, 426 S.W.3d 644 (Mo. App. E.D. 2013). They are also wholly inconsistent with the Eastern District’s decision in *Unverferth*, which held that rebuttable presumptions are valid in

Missouri. *Unverferth v. City of Florissant, et al.*, 419 S.W.3d 76, 104 (Mo. Ct. App. E.D. 2013). In *Unverferth*, the Eastern District observed that the “validity of such a presumption has been long established in Missouri,” and held as a matter of law that the rebuttable presumption was permissible because it was not wholly unreasonable or arbitrary. *Id.* at 99.

The circuit court’s application of the decisions in *Brunner* should be reconsidered because the Court of Appeals found violations of Arnold’s red light camera ordinance to be criminal solely because of language in the Notice of Violation warning a violator of the possibility of incarceration for failure to appear in Court. *Brunner*, 427 S.W.3d at 233. But, the failure to appear is an entirely separate offense from the ordinance violation. Rule 37.33 requires municipalities to send notices that conform to the Uniform Citation, which requires the inclusion of language warning violators of a possibility of arrest for failure to appear. Therefore, finding that a municipal ordinance is criminal in nature merely because Rule 37.33 and the Uniform Citation require this warning language would essentially render all municipal ordinance violations criminal. The Court of Appeals could not have intended such a sweeping result. For this reason, the MML asks this Court to clarify the decisions in *Brunner* and *Damon* regarding a municipality’s use of the rebuttable presumption in the prosecution of municipal ordinance violations.

CONCLUSION

For the foregoing reasons, the Missouri Municipal League, as *amicus curiae*, respectfully asks this Court to reverse the circuit court’s Order and Judgment declaring the City’s Ordinance void, and reexamine the conflict analysis applied by the Court of

Appeals, and relied on by the circuit court, in finding that these ordinances conflict with state law. The MML also asks this Court to clarify the contradictory state of the law on the nature of municipal ordinances and the use of the rebuttable presumption in the prosecution of municipal ordinance violations, in particular in light of the recent decisions in *Brunner* and *Damon*.

Respectfully submitted,

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CERTIFICATE PURSUANT TO RULES 84.06(C) AND 84.06(G)

The undersigned counsel for amicus curiae the Missouri Municipal League states:

1. Complies with the requirements of Mo. R. Civ. P 55.03;
2. Complies with the limitations set forth in Mo .R. Civ. P. 84.06(b); and
3. Contains 2,636 words, as determined by Microsoft Word Software.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was filed with the Clerk of the Court using the Court's electronic filing system and that notice of such filing will be served upon the following counsel of record:

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